

STATE OF MICHIGAN
COURT OF APPEALS

KEITH RAINER,

Plaintiff-Appellant,

v

TRI COUNTIES MULTI TRADE CENTERS and
FRANK BRANHAM,

Defendants-Appellees.

UNPUBLISHED

February 2, 2010

No. 289050

Wayne Circuit Court

LC No. 07-731875-NO

Before: Murphy, C.J., and Jansen and Zahra, JJ.

ZAHRA, J. (*concurring in part and dissenting in part*).

I concur in the portion of the majority opinion that affirms dismissal of plaintiff's common law negligence claims under the open and obvious danger doctrine. I dissent from the portion of the majority opinion that reverses the judgment of the trial court on the question of statutory benefits under the Workers' Disability Compensation Act, MCL 418.101 *et seq.*

Plaintiff failed to preserve this issue in the trial court. Further, plaintiff did not allege or request in his complaint an award of such benefits. Accordingly, the issue is not properly preserved. I would affirm in full the judgment of the trial court.

/s/ Brian K. Zahra